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FILE: LIN 03 146 54417 Office: NEBRASKA SERVICE CENTER Date: JUN 9 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a hotel that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and that the director's decision is an abuse of discretion.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support; (3) the director's request for additional evidence; (4) counsel's letter that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would prepare and analyze the financial statements for hotel management, provide budget reports, income and expense reports and cash flow projections for management; prepare bank reconciliation, maintenance of general ledger, control and monitor accounts receivable and payable, inventory and asset control, and audit and control the hotel's daily transactions and prepare daily revenue report. The petitioner indicates that the position required knowledge and competence in accounting with a quantitative/analytical approach to financial matters and risk management.

In its response to the director's request for further evidence, counsel provided the following breakdown of the beneficiary's duties: prepare and analyze financial statements, including budgets, for hotel management: 30 per cent of the beneficiary's time; preparing bank reconciliation reports, and maintenance of general ledger: 40 per cent of the beneficiary's time; and auditing and controlling hotel's daily transactions and preparing periodic revenue reports: 30 per cent of the beneficiary's time. In addition, counsel stated that a clerk performed present day-to-day financial tasks (recording and filing) under the supervision of the general manager, and that the petitioner retained an accounting firm to prepare its financial and tax reports. According to counsel, the beneficiary would train the clerk presently employed by the petitioner to make proper journal and ledger entries and account reconciliation. Counsel further stated that the growth of the hotel along with increased and more complex financial transactions mandated having an in-house professional with at least a college degree in the finance or accounting field who could put in place proper accounting and budget systems and control procedures.

The director found that, based on the described duties and the nature of the petitioner's business operations, the proffered position was not a specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the position is an accountant, which is a specialty occupation. Counsel further states that the size of the petitioner's business is not a valid ground for determining that the proffered position is not a specialty occupation. Counsel also examines the duties of the position, and introduces a new level of supervision for the beneficiary, namely, that she will be examining and verifying financial data provided by the petitioner's bookkeepers.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's [REDACTED] reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only

degreed individuals. [REDACTED]

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. While the *Handbook* does not refer to the use of part-time or full-time in-house accountants in small businesses, it does state that many accountants work for large accounting firms or are self-employed and do periodic accounting work for businesses. In sum, the *Handbook* is very clear with regard to the requirement for a bachelor's degree for entry into the accounting field.

What is less clear in the present proceedings is whether the proffered position is an accountant. This is due in part to the confused nature of the information in the record with regard to the duties of the position. For example, in its response to the director's request for further evidence, counsel noted that the petitioner's present financial accounting infrastructure consisted of a clerk under the supervision of the general manager, and the use of an accounting firm for preparation of its tax and financial reports. Counsel stated that the beneficiary would supervise the clerk.

On appeal, counsel then presents a more complex staff structure that includes the petitioner's bookkeepers reporting to the beneficiary. There is no previous mention of bookkeepers in the instant petition. Counsel provides no further explanation for this significant change in the beneficiary's job responsibilities. It is noted that the petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. [REDACTED] If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. For this reason, only the duties originally described in the initial petition and in response to the director's request for further evidence are considered in this proceeding.

Upon review of the initial job duties, the proffered position appears to be that of a full-charge bookkeeper. The 2004-2005 edition of the *Handbook* describes the work duties of bookkeeping, accounting, and auditing clerks, in the following manner:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data. . . . In small establishments [REDACTED] financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The *Handbook* notes no specific training or educational requirements listed for the bookkeeping classification. However, it notes: "Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial

transactions, from payroll to billing.” An associated *Handbook* classification of financial clerks does provide some information on necessary academic credentials for a bookkeeping position. The *Handbook* states:

For occupations such as bookkeepers, accounting clerks, and procurement clerks, an associate’s degree in business or accounting often is required. Some financial clerks have bachelor’s degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions.

Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar firms, the petitioner submitted five vacancy announcements for accountant positions in the Chicago area. These vacancy announcements are for companies such as a manufacturing company, a baseball team, and a real estate business. None of these job vacancy announcements is for an accountant position in a hotel. Therefore, this documentation is not viewed as sufficient to establish that similar firms require baccalaureate degrees in a specific specialty for parallel positions. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner established that the position is a new one. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties of the position appear routine to any bookkeeping position. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform based on its corporate relationship to the Howard Johnson hotel chain, or based on its present business volume or operations. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.